

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

WARREN WADDY,

Petitioner,

Case No. 3:98-cv-084

-v-

District Judge Timothy S. Black
Magistrate Judge Michael R. Merz

:

NORMAN ROBINSON, Warden,

Respondent.

SCHEDULING ORDER

This capital habeas corpus case is before the Court upon the filing of Judge Black's Decision and Entry Overruling Respondent's Objections (Doc. No. 206) to the Magistrate Judge's Order granting leave to amend the Petition to add two lethal injection grounds for relief (Doc. No. 182). While those Objections were pending, Petitioner sought and was granted leave to file a second amended petition bringing before this Court his claim under *Atkins v. Virginia*, 536 U.S. 304 (2002), on which state court remedies were recently exhausted (See Doc. Nos. 199, 201, 204).

It is accordingly ordered that Petitioner file the proposed second amended petition (attached to Doc. No. 204) forthwith. The attachments to that document which were submitted as attachments under seal are appropriate for sealing because of their content and may be filed under seal if made available to opposing counsel.

The Warden shall file an amended answer/return of writ not later than February 15, 2013. Prior to filing the amended return, the Warden shall file electronically the entire state court

record, including both the record heretofore filed and the new record generated in the *Atkins* post-conviction proceedings. When the record is filed electronically, the Court's CM/ECF filing system will affix a unique PageID number to each page of the record, displayed in the upper right-hand corner of the page. All papers filed in the case thereafter, by either party, including the amended answer and the exhibit index, shall include record references to the PageID number. Prior to filing the state court record, the Warden's counsel shall ensure that any borders on parts of the record (typically, court reporter transcripts) do not obscure the PageID number when the page is filed.

Not later than thirty days after the amended answer/return of writ is filed, Petitioner shall file an amended reply/traverse.

Prior to the time the amended reply/traverse is filed, counsel for the parties shall consult among themselves to discuss the issues which would ordinarily be discussed by counsel in civil cases generally under Fed. R. Civ. P. 26(f) and file with the Court a proposed schedule for any other events in the case after pleadings are complete, including without limitation, a date for moving for any additional discovery and for completing that discovery.

January 4, 2013.

s/ *Michael R. Merz*
United States Magistrate Judge